

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Alexander Opoku-Agyemang	Team: Team # 4	CCRB Case #: 201402264	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 03/07/2014 10:30 PM	Location of Incident: [REDACTED]	Precinct: 73	18 Mo. SOL 9/7/2015	EO SOL 9/7/2015	
Date/Time CV Reported Mon, 03/10/2014 9:49 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 03/10/2014 9:49 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. SGT Yancy Blowe	02316	932134	073 PCT
2. POM Daniel Berardi	07962	948658	073 PCT
3. POM Richard Cleri	16063	944034	073 PCT
4. POM Carlos Anton	06657	948621	073 PCT
5. An officer			073 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Richard Cleri	Abuse: At § 87(2)(b) in Brooklyn, PO Richard Cleri stopped § 87(2)(b)	[REDACTED]
B.POM Richard Cleri	Abuse: At § 87(2)(b) in Brooklyn, PO Richard Cleri frisked § 87(2)(b)	[REDACTED]
C. An officer	Abuse: At § 87(2)(b) in Brooklyn, an officer searched § 87(2)(b)	[REDACTED]
D.POM Richard Cleri	Force: At § 87(2)(b) in Brooklyn, PO Richard Cleri used physical force against § 87(2)(b)	[REDACTED]
E.SGT Yancy Blowe	Force: At § 87(2)(b) in Brooklyn, Sgt. Yancy Blowe used physical force against § 87(2)(b)	[REDACTED]
F.POM Daniel Berardi	Force: At § 87(2)(b) in Brooklyn, PO Daniel Berardi used physical force against § 87(2)(b)	[REDACTED]
G.POM Carlos Anton	Force: At § 87(2)(b) in Brooklyn, PO Carlos Anton used physical force against § 87(2)(b)	[REDACTED]
H.POM Carlos Anton	Discourtesy: At § 87(2)(b) in Brooklyn, PO Carlos Anton spoke rudely to § 87(2)(b)	[REDACTED]
I.POM Carlos Anton	Force: At § 87(2)(b) in Brooklyn, PO Carlos Anton restricted § 87(2)(b)'s breathing.	[REDACTED]
J.POM Daniel Berardi	Abuse: At § 87(2)(b) in Brooklyn and the 73rd Precinct stationhouse, PO Daniel Berardi refused to provide his shield number to § 87(2)(b)	[REDACTED]
K.POM Richard Cleri	Abuse: At § 87(2)(b) in Brooklyn and the 73rd Precinct stationhouse, PO Richard Cleri refused to provide his shield number to § 87(2)(b)	[REDACTED]

Case Summary

At approximately 10:30 p.m. on March 7, 2014, § 87(2)(b) was observed by PO Richard Cleri, Sgt. Yancy Blowe, PO Daniel Berardi, and PO Carlos Anton of the 73rd Precinct at § 87(2)(b) in Brooklyn. PO Cleri stopped § 87(2)(b) by grabbing him (**Allegation A**). § 87(2)(b) attempted to pull away from PO Cleri and the other officers, who also grabbed him shortly thereafter, and, during the ensuing struggle, an officer or officers, he could not see whom specifically, frisked his waist and searched his pockets and boots (**Allegations B and C**). The officers pushed § 87(2)(b) to ground (**Allegations D, E, F, and G**). Once he was on the ground the officers handcuffed § 87(2)(b) then requested the officers' shield numbers. Only Sgt. Blowe provided his shield number. PO Anton told him to "Shut the fuck up" (**Allegation H**) and covered § 87(2)(b)'s mouth and nose with the bottom of his sweatshirt, restricting his breathing (**Allegation I**). § 87(2)(b) was transported to the 73rd Precinct stationhouse, where he again requested the shield numbers of PO Cleri, PO Berardi, and PO Anton. PO Anton provided his shield number while PO Cleri and PO Berardi ignored his requests (**Allegation J and K**). PO Berardi issued a summons to § 87(2)(b) for disorderly conduct (Encl. 7V) and he was released (complaint (Encl. 5A-B), telephone statement (Encl. 6A, W), CCRB statement (Encl. 6B-V), notice of claim (Encl. 6X-BB)).

Mediation, Civil and Criminal Histories

On April 2, 2014, § 87(2)(b) filed a notice of claim with the City of New York, claiming false arrest, false imprisonment, assault and battery, unlawful stop, unlawful search of person, infliction of physical injuries, and use of excessive and unreasonable physical force and seeking \$3 million as redress (Encl. 6X-BB). As a result of the ongoing claim, this case was ineligible for mediation. § 87(2)(b)

Civilian and Officer CCRB Histories

- § 87(2)(b) has filed four prior CCRB complaints (Encl. 2E)
 - In CCRB case # 200802972, allegations of stop, vehicle search, discourtesy, and strip search were unsubstantiated while a vehicle search allegation was closed as officer unidentified.
 - In CCRB case # 200905259, allegations of vehicle stop, vehicle search, threat of summons, and search of person were closed as complainant uncooperative.
 - In CCRB case # 200905260, allegations of vehicle stop and vehicle search were closed as complainant uncooperative.
 - In CCRB case # 201401709, allegations of stop, search, and refusal to provide name and shield numbers were closed as officers unidentified.
- Sgt. Blowe has been a member of the NYPD for 11 years and has had 16 previous CCRB allegations involving 11 cases with no substantiated allegations. He has six other allegations of physical force. Two of these allegations were exonerated, one was unfounded, one was closed as complainant uncooperative, and two remain under investigation (Encl. 2A).
- PO Cleri has been a member of the NYPD for seven years and has had eight previous CCRB allegations involving three cases with no substantiated allegations. § 87(2)(g)
- PO Berardi has been a member of the NYPD for four years and has had six previous CCRB allegations involving three cases with no substantiated allegations. § 87(2)(g)
- PO Anton has been a member of the NYPD for four years and has had ten previous CCRB allegations involving five cases with no substantiated allegations. He has two other discourtesy allegations. One was closed as complainant unavailable while the other was closed as complainant uncooperative. He has two other chokehold allegations. One was unsubstantiated while the other was closed as complainant uncooperative (Encl. 2D).

Potential Issues

§ 87(2)(b) stated that an employee at a § 87(2)(b), witnessed parts of the incident. Between April 2, 2014, and April 23, 2014, six calls were made to the store. The employee who witnessed the incident was identified via these calls as § 87(2)(b). On the first four occasions the undersigned investigator spoke with various employees as to when § 87(2)(b) would be present at the store. However, when the investigator would call at the appointed times, § 87(2)(b) was not available. No one picked up the phone on the final two calls to the store.

Findings and Recommendations

Allegations Not Pleaded

- **Refusal to Provide Shield Number:** In his sworn statement, § 87(2)(b) stated that when he requested PO Anton's shield number, he provided it verbally as "6605." § 87(2)(b) committed it to memory. PO Anton's shield number is "6657." In his statement, PO Anton insisted that he provided his shield number correctly as "6657." Given the closeness of the two numbers, the investigation determined that the more likely circumstance was that PO Anton provided the correct shield number to § 87(2)(b) and that § 87(2)(b) either misheard or misremembered part of it.
- **Frisk and Search:** § 87(2)(b) stated that, once he was handcuffed and returned to his feet, PO Anton frisk and searched him. Due to the fact that this occurred after his arrest and § 87(2)(b) was to be placed in an RMP and transported to the stationhouse shortly thereafter, this frisk and search was determined to be incident to an arrest and was not pleaded.

Explanation of Subject Officer Identification

- The officers consistently stated that PO Cleri was the officer who physically stopped § 87(2)(b). PO Cleri and PO Berardi, the two officers in the unmarked car as it approached § 87(2)(b) both stated that their intent as they initially approached § 87(2)(b) was not to stop him. However, once PO Cleri exited the car, he made the decision to stop § 87(2)(b). Once the struggle ensued between PO Cleri and § 87(2)(b) the other officers joined in. The stop allegation was therefore pleaded against PO Cleri alone.
- § 87(2)(b) did not see which officer(s) frisked or searched him during the struggle. PO Cleri acknowledged having frisked § 87(2)(b) during the struggle. The frisk allegation was pleaded against PO Cleri. All four officers denied having searched § 87(2)(b) prior to his handcuffing. Without further evidence, the investigation could not identify the officer(s) who allegedly searched § 87(2)(b) and the allegation was pleaded against "An officer" from the 73rd Precinct.

Recommendations

Allegation A – Abuse of Authority – At § 87(2)(b) in Brooklyn, PO Richard Cleri stopped § 87(2)(b)

Allegation B – Abuse of Authority – At § 87(2)(b) in Brooklyn, PO Richard Cleri frisked § 87(2)(b)

§ 87(2)(b) called the CCRB and filed his initial complaint on March 10, 2014 (Encl. 5A-B). He provided a telephone statement on March 18, 2014 (Encl. 6A), a sworn statement on March 26, 2014 (Encl. 6B-V), and additional information via telephone on April 23, 2014 (Encl. W). § 87(2)(g)

§ 87(2)(b) Sgt. Blowe was interviewed on May 14, 2014 (Encl. 7D-F), PO Cleri was interviewed on July 2, 2014 (Encl. 7J-L), PO Anton was interviewed on July 15, 2014 (Encl. 7P-R), and PO Berardi was interviewed on August 12, 2014 (Encl. 7W-Z). § 87(2)(g)

§ 87(2)(b) stated that, as he was walking along Broadway, an unmarked car drove past him, made a U-turn, and pulled up in the crosswalk of § 87(2)(b). § 87(2)(b) was not wearing a mask, had a small phone in one of his pockets, and a large phone (Encl. 6G) in his hand. § 87(2)(b) walked past the unmarked car to continue on his way. At this point four officers, identified via the investigation as Sgt. Blowe, PO Cleri, PO Berardi, and PO Anton, exited the unmarked car. § 87(2)(g)

§ 87(2)(b) In his initial complaint, he stated that one of the officers told him to “stop” because they wanted to speak to him. § 87(2)(b) tried to walk away from the officers, at which point they grabbed him and pushed him against their car. In his telephone statement, § 87(2)(b) stated that the officers immediately grabbed him upon exiting from their car. In his sworn statement, § 87(2)(b) stated that, after the officers grabbed him, but before pinning him against the car, one of them said, “Let me talk to you.” He also explained that he was “right next to the car” when the officers grabbed him and they did not move him prior to “pinning” him against the car.

§ 87(2)(b) consistently stated that, at this point, he said to the officers, “Get the fuck off me,” attempted to pull his arms away from them, and attempted to turn his body around. The officers pulled his right arm behind his back and placed a cuff on his right wrist. The officers, however, were not able to cuff his left arm or pull it back. While this was occurring, § 87(2)(b) felt an officer patting down his waist and then the rest of his lower body. He then felt hands going into the pockets of his jeans and his sweatshirt and into his boots.

Sgt. Blowe, PO Cleri, and PO Berardi stated that, as PO Berardi drove the unmarked car down Broadway, they observed § 87(2)(b) walking on the sidewalk, wearing a facemask covering his entire face, except his eyes, but wearing no jacket. PO Anton stated that he did not observe § 87(2)(b) at this initial point. Sgt. Blowe stated that PO Berardi informed him at this point that he had observed what he believed to be the butt of a gun on § 87(2)(b)'s waistband. Sgt. Blowe, however, stated that he was not in position to see this because he was in the passenger seat. PO Berardi and PO Cleri, however, stated that they saw no such bulges on § 87(2)(b) at this initial point and that PO Berardi made no such assertion at that point. Both PO Berardi and PO Cleri stated that they found § 87(2)(b)'s attire suspicious due to the fact that he was wearing a facemask but only a hooded sweatshirt in approximately 40 degree weather. PO Cleri stated that there was a bodega at the intersection and he suspected, at the time, that § 87(2)(b) may have been going to rob the bodega. PO Berardi stated that there had been several robberies in the vicinity of the incident location and he suspected § 87(2)(b) of “possibly canvassing the location.”

PO Berardi suggested to the other officers that they speak to § 87(2)(b) to assess what was going on. PO Berardi stated that he did not suspect § 87(2)(b) of any particular crime at this time and that his intent in approaching § 87(2)(b) was “just to speak to him, say ‘how you doing’...I wasn’t gonna stop him, just to speak to him.” PO Berardi added that, “If someone is wearing a facemask or something, we just want to talk to the person, ‘Hey, how you doing?’ ‘I have a cold,’ ‘I’m sick,’ ‘I’m just trying to keep the air warm,’ whatever it is, you know, ‘Have a good day, alright that’s it.’”

PO Berardi stopped the car and PO Anton and Sgt. Blowe exited, in order to remain on the opposite side of the street in case § 87(2)(b) ran. PO Berardi made a U-turn and pulled up in the intersection of § 87(2)(b). PO Cleri then exited the car and walked towards § 87(2)(b) saying, “Police, we just want to talk to you,” as he did so. As PO Cleri approached him, § 87(2)(b) “bladed” the right side of his body away from PO Cleri. At this point, PO Cleri observed bulge on § 87(2)(b)'s right hip. The object was covered by § 87(2)(b)'s shirt but PO Cleri observed that it protruded upwards from his waist and out of his shirt. Its top was an approximately three to four inches long straight horizontal line with a smaller vertical edge. PO Cleri could not see the outline of the object itself but the outline of the top and the edge that he did see resembled the handle of a handgun. PO Cleri had not seen the object at § 87(2)(b)'s waist until he exited the car but stated that, since the object was on § 87(2)(b)'s right hip and the car had been

to the left of § 87(2)(b) none of the officers had been in a position to see it prior to that point.

Once he saw the bulge, PO Cleri reached to touch it with his left hand to determine what it was. PO Cleri did not say anything or ask any questions about the bulge prior to reaching toward it. § 87(2)(b) pushed PO Cleri's arm away before he could touch the bulge. § 87(2)(b)'s refusal to allow PO Cleri to touch the object further raised PO Cleri's suspicion that the object may have been a gun. PO Cleri then grabbed the sleeve of § 87(2)(b)'s sweatshirt, pulled § 87(2)(b) towards him, and again attempted to grab the bulge. § 87(2)(b) would still not let PO Cleri touch the bulge. § 87(2)(b) attempted to push PO Cleri off and appeared to take "a swing or two" at PO Cleri but PO Cleri held his arm and they did not connect. PO Cleri stated that, at the time he initially approached § 87(2)(b) he "just wanted to find out why he was walking around with a mask and no jacket; he was free to go, he wasn't being detained at any point up until he started swinging away after I saw what he had on his hip."

When the other three officers observed the struggle between § 87(2)(b) and PO Cleri, they ran over and grabbed § 87(2)(b). A struggle, consistent with § 87(2)(b)'s account, ensued. PO Cleri continued to attempt to frisk the bulge on § 87(2)(b)'s waist but he continued to prevent PO Cleri from doing so with his movements. Sgt. Blowe stated that he grabbed § 87(2)(b)'s legs and pulled him out from beneath his body to take him to the ground. Once on the ground, PO Cleri was able to finally touch the bulge and identified the object as an approximately three to four inches wide cell phone in a hip-holster. PO Cleri did not recall whether his touching of the object occurred before or after § 87(2)(b) was handcuffed. PO Cleri stated that he did not enter § 87(2)(b)'s pockets after frisking him.

§ 87(2)(b) denied that he was wearing a mask during this incident and stated that he had a small phone in one of his pockets and a large phone in his hand. However, in § 87(2)(b)'s prior CCRB complaint, CCRB case # 201401709 (Encl. 13A-B), § 87(2)(b) described himself attired during that incident in the same way described by PO Cleri in this incident: wearing a facemask, with his large phone clipped to a holster on his waist and covered by his sweatshirt. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

It is undisputed that no significant verbal interactions occurred between PO Cleri and § 87(2)(b) prior to PO Cleri grabbing § 87(2)(b). § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

In order for a stop to be justified, an officer must have a reasonable suspicion that a person is committing, has committed or is about to commit a crime. Furthermore, in order to frisk a person, an officer must have reasonable suspicion that a person is armed. *People v. DeBour*, 40 N.Y. 2d 210 (1976) (Encl. 1A-K). The courts have established that officers observing an individual with a waistline bulge, which they reasonably believed to be a gun, had the requisite reasonable suspicion to stop the individual. *People v. Stephenson*, 932 N.Y.S.2d 159 (2011) (Encl. 1L-M)

§ 87(2)(b), § 87(2)(g)

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§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation C – Abuse of Authority – At § 87(2)(b) in Brooklyn, an officer searched § 87(2)(b)

As previously discussed, § 87(2)(b) could not see the officer(s) who searched him during the struggle and none of the officers acknowledged having done so. § 87(2)(g)

§ 87(2)(g)

Allegation D – Force – At § 87(2)(b) in Brooklyn, PO Richard Cleri used physical force against § 87(2)(b)

Allegation E – Force – At § 87(2)(b) in Brooklyn, Sgt. Yancy Blowe used physical force against § 87(2)(b)

Allegation F – Force – At § 87(2)(b) in Brooklyn, PO Daniel Berardi used physical force against § 87(2)(b)

Allegation G – Force – At § 87(2)(b) in Brooklyn, PO Carlos Anton used physical force against § 87(2)(b)

It is undisputed that, when officers grabbed § 87(2)(b) he attempted to pull away and refused to allow them to handcuff him. The officers then took him to the ground and handcuffed him. As per his statements, Ambulance Call Report (Encl. MR1-3) and medical records (Encl. MR7-50), § 87(2)(b) suffered “minor abrasions” to his knees and his left hand, which he attributed to being taken to the ground, and on his wrists, which he attributed to the handcuffs. He also reported pain in his back, chest, and knees. He was treated by EMTs on March 8, 2014, and at § 87(2)(b) Hospital on § 87(2)(b), and released with a prescription of Ibuprofen for pain.

Penal Law Section 35.30 (Encl. 1P-Q) and Patrol Guide section 203-11 (Encl. 1N-O) hold that officers are able to use physical force to overcome resistance in the course of effecting an arrest.

§ 87(2)(b), § 87(2)(g)

Allegation H – Discourtesy – At § 87(2)(b) in Brooklyn, PO Carlos Anton spoke rudely to § 87(2)(b)

Allegation I – Force – At § 87(2)(b) in Brooklyn, PO Carlos Anton restricted § 87(2)(b)'s breathing.

§ 87(2)(b) alleged that, after he was handcuffed and stood on his feet, he requested the officers' shield numbers. Sgt. Blowe provided his shield number. When § 87(2)(b) persisted in asking for the shield numbers of the other officers, PO Anton told him to “Shut the fuck up” and covered § 87(2)(b)'s mouth and nose with the bottom of his sweatshirt, restricting his breathing. PO Anton denied that this occurred and all of the other officers denied having observed this. § 87(2)(b), § 87(2)(g)

Allegation J – Abuse of Authority – At § 87(2)(b) in Brooklyn and the 73rd Precinct stationhouse, PO Daniel Berardi refused to provide his shield number to § 87(2)(b)

Allegation K – Abuse of Authority – At § 87(2)(b) in Brooklyn and the 73rd Precinct stationhouse, PO Richard Cleri refused to provide his shield number to § 87(2)(b)

§ 87(2)(b) stated that, at the stationhouse, he again requested the shield numbers of the officers. PO Anton provided his shield number but PO Cleri and PO Berardi ignored his requests. PO Cleri acknowledged having not provided his shield number to § 87(2)(b) at the scene of his arrest. He stated that this was because he was in a rush to get § 87(2)(b) of the street following his arrest. He stated, however, that in the stationhouse he provided both his name and shield number to § 87(2)(b). PO Berardi stated that he provided his shield number to § 87(2)(b) upon his initial request at the scene of his arrest. Both PO Anton and Sgt. Blowe stated that all four of them provided their shield numbers to § 87(2)(b) upon his

request. § 87(2)(b), § 87(2)(g)

Team: 4

Investigator: _____ Alexander Opoku-Agyemang December 29, 2014
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date